

**IN THE UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

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ROBERT GONZALEZ,

Appellant,

v.

ROBERT A. MCDONALD,  
Secretary of Veterans Affairs,

Appellee.

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**ON APPEAL FROM THE  
BOARD OF VETERANS' APPEALS**

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**BRIEF OF APPELLEE  
SECRETARY OF VETERANS AFFAIRS**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

ROBERT GONZALEZ,	)	
	)	
Appellant,	)	
	)	Vet. App. No. 15-3635
v.	)	
	)	
ROBERT A. MCDONALD,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

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**ON APPEAL FROM THE  
BOARD OF VETERANS' APPEALS**

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**BRIEF OF APPELLEE  
SECRETARY OF VETERANS AFFAIRS**

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**I. ISSUE PRESENTED**

Whether the Court should affirm the August 10, 2015, BVA decision, which denied entitlement to a compensable disability rating for service-connected psoriasis prior to July 17, 2007, and rating in excess of 60 percent thereafter.

**II. STATEMENT OF THE CASE**

**A. Jurisdictional Statement**

Jurisdiction of the Court is founded upon 38 U.S.C. § 7252.

## **B. Nature of the Case**

Appellant appeals the August 10, 2015, Board decision, which denied entitlement to a compensable rating for the service-connected psoriasis prior to July 17, 2007, and a rating in excess of 60 percent thereafter.<sup>1</sup> Record Before the Agency [R. at 2 – 14].

## **C. Statement of Relevant Facts**

Appellant served on active duty from December 1977 to August 1983. [R. at 1129].

In March 2000, the Department of Veterans Affairs Regional Office (VARO) received Appellant's claim for VA disability benefits. [R. at 1121 - 1128]. He sought entitlement to service connection for psoriasis. *Id.*

In a decision dated in December 2000, the RO granted entitlement to service connection for psoriasis and assigned a noncompensable rating, effective March 31, 2000. [R. at 1037 – 1047].

In November 2005, the RO received Appellant's claim for VA disability benefits. [R. at 873].

In March 2006, the RO received Appellant's claim for VA disability benefits. [R. at 1121 - 1128]. He sought entitlement to a compensable rating for the service-connected psoriasis. *Id.*

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<sup>1</sup> Psoriasis is a common chronic, squamous dermatosis characterized by the eruption of discrete and confluent lesions. *Dorland's Illustrated Medical Dictionary* 1163 (28th. ed.1994).



During a March 2006 VA examination, Appellant presented with constant itching, shedding, and crusting. [R. at 812 (812 – 813)]. The examiner noted that the psoriasis did not involve any areas that are exposed to the sun, and over the past twelve months, he had received topical medication only for the skin condition. *Id.* A physical examination revealed that there was no scar present. The psoriasis, located on the left knee, had the following characteristics: exfoliation, crusting, induration of less than six square inches and abnormal skin texture of less than six square inches. *Id.* There was no ulceration, tissue loss, inflexibility, hypopigmentation, hyperpigmentation, or limitation of motion. *Id.* The skin lesion was zero percent of the exposed area, and the skin lesion coverage relative to the whole body was 0.5 percent. *Id.*

In a July 2006 decision, the RO denied entitlement to a compensable rating for the service-connected psoriasis prior to July 17, 2007, and in excess of 60 percent thereafter. [R. at 748 – 767].

In February 2007, Appellant filed his Notice of Disagreement (NOD). [R. at 732 – 733]. In addition, he sought entitlement to service connection for psoriatic arthritis. [R. at 735]. During a visit to a VA dermatology clinic in March 2007, the assessment was “[p]soriasis <10% BSA with poss. early psoriatic arthritis.”<sup>2</sup> [R. at 697 (696 – 697)].

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<sup>2</sup> Psoriatic arthropathy is a syndrome in which psoriasis occurs in association with inflammatory arthritis, also known as psoriatic arthritis. *Dorland's Illustrated Medical Dictionary* 1163 (28th. ed.1994). Psoriatic arthritis is a type of

During a separate VA rheumatology consultation in March 2007, the impression was psoriatic arthritis in the left thumb. Appellant was prescribed Methotrexate by the rheumatologist at that time. [R. at 504 - 505].

In June 2007, following Appellant's complaint of a poor response, a VA rheumatologist prescribed an increased dose of Methotrexate 12.5mg per week and provided him with information about Humira used to treat his psoriatic arthritis. [R. at 698 – 699]. Later in the month, a VA rheumatology evaluation noted, "[r]eason for chart check: Review labs relative to Psoriatic arthritis while on MTX and Humira." [R. at 700]. The assessment was psoriatic arthritis. *Id.*

In July 2007, Appellant was given further instruction about how to use Humira self-injection teaching that was ordered by the rheumatologist. [R. at 701 – 704]. In August 2007, a VA rheumatology treatment record noted Appellant had an excellent response to his use of Humira for his psoriatic arthritis. [R. at 706 – 707].

In September 2007, a VA outpatient progress note recited Appellant's prescribed medications but Methotrexate was not listed. [R. at 708 - 710].

In a March 2010 decision, the RO increased the rating for the service-connected psoriasis to 10 percent disabling, effective December 13, 2007. [R.

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inflammation that occurs in about 15 percent of patients who have a skin rash called psoriasis. This particular arthritis can affect any joint in the body, and symptoms vary from person to person. - See more at: <http://www.rheumatology.org/I-Am-A/Patient-Caregiver/Diseases-Conditions/Psoriatic-Arthritis#sthash.GmQj3H65.dpuf>

at 1246 - 1252]. In addition, the RO granted entitlement to service connection for bilateral psoriatic arthritis and assigned a 10 percent rating for each knee, respectively, effective March 1, 2007. *Id.* Also, in the same month, the RO issued a Statement of the Case (SOC) which continued the noncompensable rating for the service-connected psoriasis. [R. at 547 – 561].

In April 2010, Appellant perfected his appeal to the Board. [R. at 493 – 494].

In an August 2010, a VA rheumatologist noted that Appellant’s “disease has been difficult to control and has required the use [of]sic potent immunosuppressive agents currently he is taking parenterally administered Tissue Necrosis Factor Inhibitor and oral sulfasalazine. These medications have potentially life threatening toxicity and must be constantly monitored.” [R. at 719].

During a February 2015 VA examination, Appellant reported that he had been “staying on, Humira, for psoriatic arthritis.” [R. at 46 - 49]. The VA examination listed his treatment with oral or topical medications in the previous 12 months for any skin condition as consisting of Adalimumab for psoriasis and noted that the total duration of medication use in past 12 months was constant/near-constant. [R. at 47 (46 – 49)]. With regard to topical corticosteroids, the listed medications were Clobetasol and Propionate for psoriasis, and the total duration of medication use in past 12 months was 6 weeks or more, but not constant. *Id.* The other topical medications used were

Hydrophilic Caream(sic) and the total duration of medication used in the previous 12 months was 6 weeks or more, but was not constant. [R. at 48 (46 – 49)]. The physical examination noted that the exposed area of psoriasis was less than 5 percent of the total body area. *Id.* The diagnosis was psoriasis. [R. at 47 (46 – 49)].

In a March 2015 decision, the RO increased the rating for the service-connected psoriasis to 60 percent, effective July 17, 2007. [R. at 24 – 29]. Also in March 2015, the RO issued a Supplemental Statement of the Case (SSOC) which continued the 10 percent rating for the service-connected psoriasis. [R. at 30 - 36].

On August 10, 2015, the BVA rendered its decision on appeal. See BVA's findings, *infra*, [R. at 2 - 14].

### **Summary of Argument**

The Court should affirm the August 10, 2015, BVA decision, which denied entitlement to a compensable rating for the service-connected psoriasis prior to July 17, 2007, and a rating in excess of 60 percent thereafter, because the Board's decision is supported by a plausible basis and contains an adequate statement of reasons or bases for its findings.

The BVA found that Appellant had not satisfied the criteria under 38 C.F.R. § 4.118, Diagnostic Code (DC) 7816, required to establish entitlement to a compensable disability evaluation for the service-connected psoriasis and that his service-connected condition more nearly approximated the criteria for a

noncompensable rating for the period prior to July 17, 2007. [R. at 8 - 10 (2 – 14)].

Contrary to Appellant's belief, the BVA was not required to explicitly discuss whether he was taking Methotrexate for the period prior to July 17, 2007, since the competent medical evidence clearly demonstrates that he was in fact prescribed Methotrexate to treat his service-connected psoriatic arthritis, which is rated by analogy to 38 C.F.R. § 4.71a, DC 5299 – 5010 and not on appeal in this case. [R. at 1247 - 1250 (1246 – 1252)].

Nor has he demonstrated that the Board erred in its determination that the evidence of record demonstrated that the rating schedule accurately reflected his then-current disability level and symptoms and, thus, the Board was not required to inquire into the second step of *Thun*, and no referral for extraschedular consideration was required. *Thun v. Peake*, 22 Vet.App. 111, 115 (2007). Therefore, Appellant has failed to demonstrate prejudicial error as he is required to do in order to prevail on appeal. See 38 U.S.C. § 7261(b)(2); see also *Shinseki v. Sanders*, 556 U.S. 396 (2009) (noting that the statute requiring this Court to “take due account of prejudicial error [ ] requires the Veteran’s Court to apply the same kind of ‘harmless error’ rule that courts ordinarily apply in civil cases”). For these reasons, the Court should affirm the Board’s finding that referral for extraschedular consideration was not warranted because it is not clearly erroneous.

The Court's review is limited to the portion of the BVA decision which denied entitlement to a compensable rating for the service-connected psoriasis prior to July 17, 2007, as Appellant does not present any argument regarding the BVA's denial of a rating in excess of the 60 percent maximum for the service-connected psoriasis for the period from July 17, 2007. See *Pederson v. McDonald*, 27 Vet.App. 276, 283 (2015) (en banc) (stating that "this Court, like other courts, will generally decline to exercise its authority to address an issue not raised by an appellant in his or her opening brief"); *Cacciola v. Gibson*, 27 Vet.App. 45, 48 (2014) (holding that, "when an appellant expressly abandons an issue in his [or her] initial brief or fails to present any challenge and argument regarding an issue, the abandoned issue generally is not reviewed by the Court").

## **ARGUMENT**

- A. The Court should affirm the August 10, 2015 BVA decision, which denied entitlement to a compensable rating for the service-connected psoriasis prior to July 17, 2007, and a rating in excess of 60 percent thereafter, because the Board's decision is supported by a plausible basis and contains an adequate statement of reasons or bases.**

The assignment of a disability rating is a factual finding that the Court reviews under the "clearly erroneous" standard of review. See *Johnston v. Brown*, 10 Vet.App. 80, 84 (1997). A finding of fact is clearly erroneous when the Court, after reviewing the entire evidence, "is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum*

Co., 333 U.S. 364, 395 (1948); *Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990). In determining the claimant's disability level, the Board is required to consider all relevant evidence of record and to consider and discuss in its decision all "potentially applicable" provisions of law and regulation. See *Schafrath v. Derwinski*, 1 Vet .App. 589, 593 (1991); see 38 U.S.C. § 7104(a); *Weaver v. Principi*, 14 Vet.App. 301, 302 (2001) (per curiam order).

Under the governing regulations, a noncompensable rating is warranted if less than 5 percent of the entire body or less than 5 percent of the exposed areas are affected and no more than topical therapy was required during the past 12-month period. 38 C.F.R. § 4.118, DC 7816. A 10 percent rating is warranted if at least 5 percent, but less than 20 percent, of the entire body is affected; at least 5 percent, but less than 20 percent, of the exposed areas are affected; or intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs were required for a total duration of less than six weeks during the past 12-month period. *Id.* A 30 percent rating is warranted if 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas are affected; or, systemic therapy such as corticosteroids or other immunosuppressive drugs were required for a total duration of six weeks or more, but not constantly, during the past 12-month period. *Id.* If more than 40 percent of the entire body or more than 40 percent of exposed areas are affected; or, constant or near-constant systemic therapy such as corticosteroids

or other immunosuppressive drugs were required during the past 12-month period, a 60 percent rating is warranted. *Id.*

In addition, psoriasis can be rated as disfigurement of the head, face, and neck under DC 7800 or for scars under DCs 7801, 7802, 7803, 7804, or 7805, depending on the predominant disability. *Id.*

In this case, the BVA found that, for the period to July 17, 2007, the preponderance of the evidence of record is against a compensable rating because the disability picture associated with the service-connected psoriasis more closely approximated a noncompensable rating under DC 7816. [R. at 9 (2 – 14)]. The BVA explained that the psoriasis affected less than 5 percent of the entire body or exposed areas and required only topical therapy. *Id.* For the period beginning July 17, 2007, the BVA found that Appellant was already receiving the maximum schedular rating under DC 7816, which is consistent with the evidence of record showing that the psoriasis required constant or near-constant systemic therapy. *Id.*

1. The BVA considered and addressed all favorable and relevant evidence of record.

Before the Court, relying on VA treatment records dated March 10, 2007 [R. at 504-506], Appellant asserts that the BVA erred by overlooking certain favorable medical evidence consisting of VA treatment records that show that he was prescribed systemic therapy, Methotrexate, for the service-connected psoriasis for the period prior to July 17, 2007, as required for a compensable



rating under DC 7816. App.Br. at 8 - 10. Specifically, Appellant explains that a VA physician had prescribed Methotrexate for him four months earlier on March 10, 2007, and has continuously been on systemic drug therapy, including Methotrexate and/or Humira, for the service-connected psoriasis ever since. App.Br. at 10.

Appellant is mistaken since the BVA considered the evidence of record prior to July 17, 2007, which shows that he was in fact prescribed Methotrexate for a different condition, psoriatic arthritis, for which he was subsequently awarded service connection on a secondary basis in March 2010. [R. at 1247 - 1248 (1246 – 1252)]. During a separate VA rheumatology consultation in March 2007, the impression was psoriatic arthritis in the left thumb. Appellant was prescribed Methotrexate at that time. [R. at 504 - 505]. In June 2007, following Appellant's complaint of a poor response, the VA rheumatologist prescribed an increased dose of Methotrexate 12.5mg per week and provided him with information about Humira used to treat psoriatic arthritis. [R. at 698 – 699]. Later in the month, Appellant was seen at the VA rheumatology evaluation noted, "[r]eason for chart check: Review labs relative to Psoriatic arthritis while on MTX and Humira." [R. at 700]. The assessment was psoriatic arthritis. *Id.* In July 2007, Appellant was given further instruction about how to use Humira self-injection teaching that was ordered by the rheumatologist. [R. at 701 – 704]. In August 2007, a VA treatment record noted Appellant had an excellent response to his use of Humira for his psoriatic arthritis. [R. at 706 – 707]. In September

2007, a VA outpatient progress note recited Appellant's prescribed medications but Methotrexate was not recorded at that time. [R. at 708 - 710]. Thus, contrary to Appellant's belief, the BVA was not required to explicitly discuss whether he was taking Methotrexate for the period prior to July 17, 2007, since the competent medical evidence clearly demonstrates that he was in fact prescribed Methotrexate to treat his service-connected psoriatic arthritis, which is rated by analogy to 38 C.F.R. § 4.71a, DC 5299 – 5010 and not on appeal in this case. [R. at 1247 - 1250 (1246 – 1252)].

For these reasons, Appellant's contentions regarding the BVA's purported failure to correctly apply the requirements in 38 C.F.R. §§ 4.3, 4.7, 4.21 are without merit because the BVA determined that the preponderance of the evidence weighed against a compensable disability rating for the service-connected psoriasis prior to July 17, 2007, where, as here, his disability picture more nearly approximated the criteria for a noncompensable rating. [R. at 9 (2 - 14)]. App.Br. at 11. See also *Middleton v. Shinseki*, 727 F.3d 1172, 1180 (Fed.Cir. 2013) (rehearing and rehearing en banc denied 743 F.3d 1356) (noting that, if the evidence shows that "the veteran's disability falls between two ratings, § 4.7 directs the VA to determine whether the disability picture more nearly approximates the criteria for the higher rating."). As discussed above, Appellant was prescribed Methotrexate by a VA rheumatologist in March 2007 to treat a separate disability, psoriatic arthritis, [R. at 504 – 505], for which he was subsequently awarded service connection in March 2010. [R. at 1246 - 1252].

Thus, the Board was not required on the facts of this case to consider either 38 C.F.R. §§ 4.7 or 4.21, and its reasons or bases for denying a compensable evaluation prior to July 17, 2007, under DC 7816 are adequate.

2. The BVA did not err in not referring his case for extraschedular schedular consideration.

Appellant asserts that the Board did not provide an adequate statement of reasons or bases for finding that a referral for extraschedular consideration pursuant to 38 C.F.R. § 3.321(b)(1) was not warranted. App. Br. at 12 - 13. Specifically, he avers that the Board failed to explain how his constant itching, shedding and/or crusting are specifically contemplated in DC 7806 and did not address the evidence of record regarding his asserted functional impairment due to the pain in his knees, which he attributed to the service-connected psoriasis. *Id.*

In *Thun v. Peake*, this Court explained that a “determination of whether a claimant is entitled to an extraschedular rating under [38 C.F.R.] § 3.321(b) is a three-step inquiry.” 22 Vet.App. at 115; see *Anderson v. Shinseki*, 22 Vet.App. 423, 427 (2009) (clarifying “that the steps are, in fact, elements that must be established before an extraschedular rating can be awarded”). First, the RO and the Board must determine whether the evidence “presents such an exceptional disability picture that the available schedular evaluations for that service-connected disability are inadequate.” *Thun*, 22 Vet.App. at 115. If it does, then the RO or Board must determine whether the disability picture exhibits other

related factors such as marked interference with employment or frequent periods of hospitalization. *Id.* If so, then the case must be referred to an authorized official to determine whether, to accord justice, an extraschedular rating is warranted. *Id.* Neither the RO nor the Board is permitted to assign an extraschedular rating in the first instance; rather, the matter must initially be referred to those officials who possess the delegated authority to assign such a rating. See *Floyd v. Brown*, 9 Vet.App. 88, 95 (1996). “[I]f the case is not referred . . . for consideration of an extraschedular rating evaluation, the Board must provide an adequate statement of reasons or bases for its decision not to so refer it.” *Colayong v. West*, 12 Vet.App. 524, 536–37 (1999); see also *Bagwell v. Derwinski*, 9 Vet.App. 337, 339 (1996).

Contrary to Appellant’s contentions (App.Br. at 12 - 13), the Board correctly found that a comparison between the level of severity and symptomatology associated with his service-connected psoriasis with the established criteria in DC 7816, showed that the rating criteria reasonably described his disability level and symptomatology. *Thun*, 22 Vet.App. at 115. See also *Barringer v. Peake*, 22 Vet.App. 242 (2008). The BVA explained that prior to July 17, 2007, the psoriasis affected less than 5 percent of the entire body or exposed areas with only topical therapy; whereas from July 17, 2007, forward, the psoriasis required constant or near-constant systemic therapy and was assigned the maximum 60 percent schedular rating. [R. at 10 -12 (2 – 14)].

Moreover, the March 2006 VA examiner noted that his constant itching, shedding, and crusting were associated with the service-connected psoriasis. [R. at 812 (812 – 813)]. No other skin diagnoses were noted at that time. *Id.* But when examined year later in March 2007, the VA dermatologist found discrete erythematous plaques with silvery scale on left knee, right forearm and scalp and noted that his psoriasis not responding to prescribed Clobetasol and Dovonex. [R. at 697 (696 – 697)]. No symptoms of itching, shedding, and crusting were noted at that time.<sup>3</sup> *Id.* The examiner noted that Appellant was to be followed by rheumatology. *Id.*

With regard to Appellant's knee pain, the March 2006 VA examiner noted that his bilateral knee condition was not secondary to the service-connected psoriasis but pointed out that it was due to an unspecified injury and had developed over time. [R. at 812 (812 – 813)]. He also then opined that there was no functional impairment due to the knee pain and that it did not result in a loss of any time from work. *Id.* Moreover, as the BVA noted, [R. at 10 – 11 (2 – 14)], the general rating schedule for skin disorders, including DC 7806 (dermatitis or eczema) (2007), contemplate these symptoms described above. Thus, citing to 38 C.F.R. § 4.1, the BVA found that Appellant's reported

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<sup>3</sup> Psoriasis is "any of a group of common, chronic, squamous dermatoses with variable symptoms and courses; some are inherited. Principal histological findings are Munro microabscesses and spongiform pustules; also seen are rounded, circumscribed, erythematous, dry, scaling patches of various sizes, covered by gray, silvery, or white, umbilicated, lamellar scales." *Dorland's* at 1570.

symptoms regarding his service-connected psoriasis were specifically contemplated by the criteria discussed above, including the effect of such symptoms on occupation and daily life. [R. at 11 (2 – 14)].

The fact that Appellant has been awarded a noncompensable rating for the service-connected psoriasis prior to July 17, 2007, does not automatically signify that his condition has no impact on his earning capacity or occupational functioning. App.Br. at 13. This interpretation is incongruent with the plain meaning and text of 38 C.F.R. § 4.1, which provides that “the degrees of disability specified [in the rating schedule] are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability.” In other words, a Veteran like Appellant who has been awarded a noncompensable evaluation under the schedular criteria is, by definition, expected to suffer interference with employment due to his service-connected disability. As discussed above, the correct standard is not whether the symptomatology stemming from Appellant’s service-connected psoriasis interfered with his employment or his activities of daily living – under section 4.1 it is presumed that said interference would indeed occur – but rather, whether said symptomatology demonstrated an exceptional or unusual disability picture, not otherwise contemplated by a schedular criteria. See *Thun*, 22 Vet.App. at 115. Here, the Board correctly determined that Appellant’s reported symptomatology did not rise to such a level, and in light of this, even if, for the sake of argument, the Board committed reasons or bases

error, he has not and cannot establish that it is in any way prejudicial to him. See [R. at 10 - 12 (2 - 14)]; *Valiao v. Principi*, 17 Vet.App. 229, 232 (2003); see also *Soyini v. Derwinski*, 1 Vet.App. 540, 546 (1991) (concluding that where evidence is overwhelmingly against claim, remand for reasons-or-bases deficiency would be superfluous).

Finally, Appellant avers that the BVA misinterpreted the Court of Appeals for the Federal Circuit's decision in *Johnson v. McDonald*, 762 F.3d 1362 (Fed. Cir. 2014) when it denied referral for extraschedular consideration without considering the "collective impact" of all his service-connected disabilities in this case. App.Br. at 13 – 15. Specifically, relying on this Court's decision in *Yancy v. McDonald*, 27 Vet.App. 484 (2016) (holding that "the Board is required to address whether referral for extraschedular consideration is warranted for a veteran's disabilities on a collective basis ... when that issue is argued by the claimant or reasonably raised by the record through evidence of the collective impact of the claimant's service-connected disabilities), he explains that the BVA erred in concluding that the evidence of record did not suggest any such combined effect or collective impact of multiple service-connected disabilities that create such an exceptional circumstance to render the schedular rating criteria inadequate [R. at 12 (2 – 14)]. App.Br. at 15 – 16. In this regard, he points to the evidence of functional impairment, some lost time from work, and his inability to perform certain activities of daily living due to the effects of his other service-connected disabilities, none of which are on appeal in this case. App.Br. at 15.

Appellant's argument is devoid of merit since it is based largely on his misinterpretation of this Court's decision in *Yancy, supra*. Although the Board must consider the combined effects of all service-connected disabilities, its consideration is limited to their "impact [on] the disability picture of the disabilities on appeal"; in other words, the Board "lacks jurisdiction to consider whether referral is warranted solely for any disability or combination of disabilities not in appellate status, just as it lacks jurisdiction to examine the proper schedular rating for a disability not on appeal." *Yancy v. McDonald*, 27 Vet.App. 496. Before the Court, Appellant's recitation or discussion of the effects of his other service-connected disabilities, which are not on appeal, are not based on their "collective impact" on the disability picture of the Appellant's service-connected psoriasis but rather on the effects of each of the service-connected disabilities, none of which are appeal, on an individual basis. App.Br. at 15.

As this Court clarified in *Yancy*, although *Johnson* requires the Board to consider the collective impact of all service-connected conditions when making an extraschedular referral determination, the Board is only required to do so when that issue is expressly raised by the veteran or reasonably raised by the record and only to the extent that these disabilities "impact the disability picture of the disabilities on appeal." *Yancy*, 27 Vet.App. at 495. In this case, however, Appellant does not allege that he expressly raised the cumulative-impact issue below and, contrary to Appellant's conjecture, nor does the record reasonably raise the issue on a collective basis. *Cf. id.* (finding that the record reasonably



raised the issue where the veteran had asserted that foot and knee conditions prevented prolonged standing and hemorrhoid conditions prohibited prolonged sitting). Instead, Appellant's assertions below were limited to the impact of his service-connected psoriasis. See, e.g. [R. at 493 – 494]. The record does not reveal an instance where the combined effect of other service-connected conditions on his psoriasis was explicitly raised by Appellant or reasonably raised by the record. See *Yancy*, 27 Vet.App. at 495. Having failed to show that the issue of combined effects of all service-connected disabilities was raised before the Board, Appellant's argument that the Board should have discussed is unavailing. See *Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (holding that the appellant has the burden of demonstrating Board error), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table).

Consequently, since Appellant has failed to show that the Board erred in its determination that the evidence of record demonstrates that the applicable schedular rating criteria accurately reflects his then-current disability level and symptoms, the Board was not required to inquire into the second step of *Thun*, and referral for extraschedular consideration was not required. *Thun*, 22 Vet.App. at 115. Put simply, Appellant does not identify, nor does the evidence of record demonstrate, any factors which may be considered to be "exceptional or unusual" for the disability at issue. *Id.*

Appellant has not carried his burden of demonstrating prejudicial error in the August 10, 2015 BVA decision. 38 U.S.C. § 7261(b)(2); *Hilkert*, 12 Vet.App.

at 151. Accordingly, the Court should affirm the Board's finding that referral for extraschedular consideration was not warranted because it is not clearly erroneous and the Board provided an adequate statement of reasons or bases.

Since Appellant has limited his assertions to those presented above (see Appellant's principle brief), the Court should find that he has abandoned any other arguments or issues, thus it would be unnecessary for this Court to consider any additional arguments at this time. *Cacciola*, 27 Vet.App. at 48.

### **CONCLUSION**

WHEREFORE, the Secretary respectfully asserts that the August 10, 2015, BVA decision, which denied entitlement to a compensable disability rating for the service-connected psoriasis prior to July 17, 2007, and in excess of 60 percent thereafter, should be affirmed because the Board's decision is supported by a plausible basis and contains an adequate statement of reasons or bases for its findings.

Contrary to Appellant's belief, the BVA was not required to explicitly discuss whether he was taking Methotrexate for the period prior to July 17, 2007, since the competent medical evidence clearly demonstrates that he was in fact prescribed Methotrexate to treat his service-connected psoriatic arthritis, which is rated by analogy to 38 C.F.R. § 4.71a, DC 5299 – 5010 and not on appeal in this case.

Respectfully submitted,

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